IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4979 OF 2004
IN
CRIMINAL APPEAL NO.1059 OF 2004

Mohammed Sagheer Md.Bashir Chauhan — Appellant (Original Accused no. 8)

vs.

State of Maharashtra — Respondent

Mr.A.M. Majeed Memon for the applicant-appellant.

Ms. V. R. Bhonsale, APP for the respondent.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 17th January 2005

P.C.

Heard Mr. A.M. Majeed Memon, the learned counsel for the accused-applicant and Ms.V.R.Bhonsale, the learned APP.

2. The applicant along with twelve others has been convicted of the offences punishable under Sections 120-B, 302, 304, 307, 324, 326 and 435 of IPC read with Section 150(2) and 151 of Indian Railways Act and Section 4 of the Prevention of Damage to Public Properties Act.

3. PW 32-Kishor N. Shetty is the eye-witness. It is true that the said witness could not identify the

present accused-applicant in the Court and, therefore, he was declared hostile. It transpires from the record that the test identification of the accused-applicant inter-alia was held on 21.05.1998 and also on 18.09.1998. PW 32 in his cross-examination admitted that in the first test identification parade held on 21.05.1998 he correctly identified two persons. It is seen that one of them was the present accused-applicant. PW 32 also admitted in his cross-examination that in the test identification parade held on 18.09.1998 he correctly identified one person. That one person is none else but the present accused-applicant. Prima facie, therefore, it cannot be said that complicity of the accused with the crime is not supported by any legal evidence.

4. The learned counsel for the accused-applicant invited our attention to the order dated 12th October 2004 passed by the Division Bench of this Court in the application for bail by Jaffar Abdul Haque Shaikh (one of the accused persons). We perused the order dated 12th October 2004. It appears therefrom that the said accused Jaffar was on bail during the trial and it was for this reason that the Division Bench of this Court deemed fit and proper to release the said accused on bail. In so far as the present accused-applicant is concerned, admittedly, he was not on bail during trial.

Prima facie, therefore is evidence connecting him with the crime.

5. We are, thus, not persuaded to suspend the sentence of the accused-applicant and release him on bail.

6. Criminal bail application is, accordingly, rejected.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)